

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Arthur M. Krieg.
Serial No.: 10/613,524
Confirmation No.: 4728
Filed: July 3, 2003
For: NUCLEIC ACID COMPOSITIONS FOR STIMULATING
IMMUNE RESPONSES
Examiner: Oluwatosin A. Ogunbiyi
Art Unit: 1645

Certificate of Electronic Filing Under 37 CFR 1.8
I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4).

Dated: January 20, 2009

Eileen M. MacKenzie
Eileen M. MacKenzie

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

TELEPHONE INTERVIEW SUMMARY

In view of the Telephone Interviews between Applicant's representative (the undersigned) and Examiner Ogunbiyi on January 5, 12 and 15, 2009, Applicant submits the following Telephone Interview Summary.

Examiner Ogunbiyi contacted Applicant's representative on January 5, 2009 proposing amendments to claims 40, 42, 45 and 97, and cancellation of claims 41, 96 and 98. Applicant considered these amendments and contacted the Examiner on January 12, 2009 to accept these amendments and to propose amendments to claims 99-102 and new claims 103-105. The Examiner considered the claim amendments and new claims proposed by Applicant and contacted Applicant's representative on January 15, 2009 to accept the new and amended claims. The Examiner indicated that a Notice of Allowance would be issued shortly. It is Applicant's understanding that the new

and amended claims discussed during these telephone interviews will be documented in such Notice.

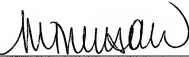
During the second telephone conference (January 12, 2009), Applicant's representative also indicated that she wanted to clarify a statement made during prosecution relating to phosphorothioate backbone modifications. More specifically, in the response dated December 27, 2007, Applicant's representative stated that "a nucleic acid with a phosphorothioate modification is not normally found in nature, and thus is eligible subject matter for patenting." However, after making this assertion, Applicant's representative became aware of a reference reporting the ability of bacteria having *dnd* genes to generate such backbone modifications. The reference, Wang et al. Nat. Chem. Biol. 3(11):709-710 2007, and a corresponding commentary reference, Eckstein, Nat. Chem. Biol. 3(11):689-690 2007, were cited in an information disclosure statement and form 1449 dated December 8, 2008. Applicant's representative therefore wishes to clarify for the record that phosphorothioate backbone modifications have been reported to be made in nature, at least by the bacteria described in the Wang et al. reference. Applicant's representative further noted that, notwithstanding this report, there was still no evidence to establish that the compositions of claims 1-3 and 22-25 (i.e., the claims rejected under 35 U.S.C. § 101) are present in nature. In the third telephone conference (January 15, 2009), the Examiner indicated that she had discussed the 35 U.S.C. § 101 rejection and the cited references with Examiner Mondesi and others at the USPTO, and it had been collectively agreed that the rejection had been overcome and would not be reinstated. Out of an abundance of caution, Applicant's representative confirmed this information with Examiner Mondesi on the same day in a separate telephone call. For the record, Applicant has brought this issue to the attention of the Examiner and the Examiner has considered the references in question (along with all other references cited during prosecution) prior to concluding that the claims were in condition for allowance.

CONCLUSION

If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Dated: January 20, 2009

Respectfully submitted,

By 

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